

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of
Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast
Stations (Littlefield, Wolfforth
and Tahoka, Texas)

MM Docket
No. 95-83

DOCKET FILE COPY ORIGINAL

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NOV 8 1995

To: Chief, Allocations Branch

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

SUPPLEMENT TO REPLY COMMENTS
OF LEE W. SHUBERT, TRUSTEE

Lee W. Shubert, Trustee, the licensee of KLLL(FM), Lubbock, Texas ("KLLL"), respectfully submits this Supplement to KLLL's reply comments, in order to notify the Commission of subsequent developments directly relevant to the issues in this proceeding.^{1/}

As KLLL has demonstrated in its reply comments, only nine months after petitioner obtained a construction permit based upon its representation that it intended to construct a facility in Littlefield, it filed its petition to reallocate its channel to a location less than three miles from Lubbock. As KLLL noted (Reply Comments at 1), petitioner thus apparently had no intention of building the facility in Littlefield authorized by

^{1/} To the extent leave is required to bring these subsequent developments to the Commission's attention, KLLL requests leave. Indeed, Rule 1.65 of the Commission's rules, while applicable only to applications, strongly supports acceptance of filings providing new information not available at the time of filing that may be decisionally significant.

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its permit. Indeed, petitioner relied upon its planned abandonment of Littlefield to support its Lubbock move-in -- an argument reminiscent of that of the apocryphal defendant who kills his parents and then asks the court for sympathy as an orphan.

This planned abandonment of service to Littlefield as contemplated by the terms of petitioner's construction permit has now become clear. On October 10, 1995, petitioner filed an application for extension of its Littlefield construction permit. A copy of that application is attached hereto. Petitioner admits in its recent application that it has not even ordered equipment, and that it does not intend to do so until after the Commission acts on its pending Lubbock move-in request. In complete disregard of the plain meaning of Section 73.3534 of the Commission's rules, petitioner then claims that there has been delay in construction at Littlefield "due to circumstances beyond [its] control" -- i.e., its own decision to file a petition for rulemaking seeking approval for the Lubbock move-in. This recent application graphically confirms that what is going on here is precisely the kind of manipulation of the Commission's allocation policies that it has refused to countenance.

For the reasons set forth above and in KLLL's reply comments, the petition to amend Section 73.202(b) of the rules should be denied.

Respectfully submitted,

LEE W. SHUBERT, TRUSTEE



William R. Richardson, Jr.

Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6038

Its Attorney

November 8, 1995

21st Century Radio Ventures, Inc.
530 Wilshire Boulevard
Suite 301
Santa Monica, CA 90401
Tel: (310) 393-2741
Fax: (310) 393-4802

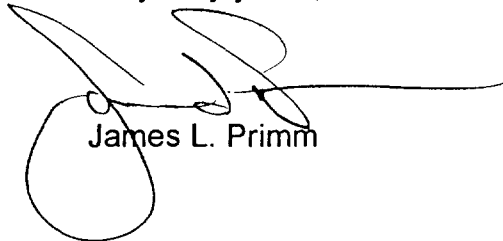
October 10, 1995

re: Extension of Time to Construct KAIQ FM, Littlefield, Texas

Federal Communications Commission
Mass Media Services
P.O. Box 358195
Pittsburgh, PA 15251-5195

Please find enclosed an application for an Extension of Time to Construct our station, KAIQ FM, Littlefield, TX. Also enclosed is a check in the amount of \$230 for the filing fee. Please contact the undersigned if you have any questions.

Very truly yours,



James L. Primm

cc: Reg Hopkinson

Federal Communications Commission
Washington, D. C. 20554Approved by OMB
3060-0407
Expires 03/31/97FOR
FCC
USE
ONLY

FCC 307

APPLICATION FOR EXTENSION OF BROADCAST
CONSTRUCTION PERMIT OR TO REPLACE EXPIRED
CONSTRUCTION PERMIT

(CAREFULLY READ INSTRUCTIONS BEFORE FILLING OUT THIS FORM)

FOR COMMISSION USE ONLY

FILE NO. BMPH-9510125A

1. APPLICANT NAME (Last, First, Middle Initial)			
21st Century Radio Ventures, Inc.			
MAILING ADDRESS (Line 1) (Maximum 35 characters)			
530 Wilshire Boulevard			
MAILING ADDRESS (Line 2) (Maximum 35 characters)			
Suite 301			
CITY	STATE OR COUNTRY (if foreign address)	ZIP CODE	
Santa Monica	CA	90401	
TELEPHONE NUMBER (include area code)	CALL LETTERS OR OTHER FCC IDENTIFIER (IF APPLICABLE)		
(310) 393-2741	KAIQ-FM		
2. A. Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112).			
<input type="checkbox"/> Governmental Entity <input type="checkbox"/> Noncommercial educational licensee/permittee <input type="checkbox"/> Other (Please explain):			
C. If Yes, provide the following information:			
Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).			
(A)	(B)	(C)	
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
M K R	0 0 0 1	\$ 230	

3. PURPOSE OF APPLICATION: ☒ a. Additional time to construct broadcast station ☐ b. Construction permit to replace expired permit

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT

Legal name of Applicant			
21st Century Radio Ventures, Inc.			
File Number	Call Letters	<input type="checkbox"/> Main Transmitter <input type="checkbox"/> Auxiliary Transmitter	
BPH 930726MB	KAIQ		
Frequency	Channel No.	City	State
95.5	238C3	Littlefield	TX

5. Submit as an Exhibit a list of the file numbers of pending applications concerning the station, e.g., major or minor modifications, assignments, etc.

Exhibit No.

6. EXTENT OF CONSTRUCTION

a. Has equipment been delivered?

☐ Yes ☒ No

If No, submit as an Exhibit a description of what equipment has been ordered, from whom and when it was ordered, and the promised delivery date (if any). If no order has been placed, so indicate and explain.

Exhibit No.
2

b. Has installation commenced?

☐ Yes ☒ No

If Yes, submit as an Exhibit a description of the extent of installation, the date on which installation commenced, and the estimated date by which construction can be completed.

Exhibit No.

7.(a) If application is for extension of construction permit, submit as an Exhibit any additional construction progress not specified above and reason(s) why construction has not been completed.

Exhibit No.
3

(b) If application is to replace an expired construction permit, submit as an Exhibit the reason for not submitting a timely extension application, together with any additional construction progress not specified above and the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

Exhibit No.

8. Are the representations, including environmental, contained in the application for construction permit still true and correct?

☒ Yes ☐ No

If No, give particulars in an Exhibit.

Exhibit No.

9. Since the filing of the applicant's last application, has an adverse finding been made or final action been taken by any court or administrative body with respect to the applicant or parties to the applicant in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☒ No

If the answer is Yes, submit as an Exhibit a full disclosure concerning the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.63(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of the filing; and (ii) the disposition of the previously reported matter.

Exhibit No.

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that a exhibits are a material part hereof and are incorporated herein as set out in full in the application.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503)

CERTIFICATION

1. By checking Yes, the applicant certifies, that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☒ Yes ☐ No

2. I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

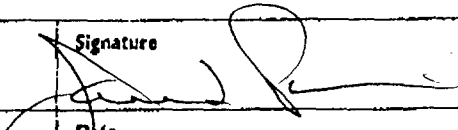
Name	Signature
21st Century Radio Ventures, Inc.	
Title	Date
President	10/10/95

Exhibit 1

Pending Matters File Numbers

Amendment of Section 73.202(b) Table of Allotments; FM Broadcast Stations;
(Littlefield, Wolfforth and Tahoka, TX)

MM Docket No. 95-83, RM-8634 (released June 19, 1995)

Exhibit 2

No equipment has yet been ordered. However, James Primm, president of Applicant, attended the National Association of Broadcasters Convention in New Orleans, Louisiana in September in order to inspect equipment and obtain quotes. We have delayed ordering equipment pending resolution of the Petition for Rule Making filed by Applicant to amend the FM table of allotments so as to delete channel 238C3 at Littlefield, TX and to add channel 238C3 at Wolfforth, TX and to modify Applicant's unbuilt construction permit to specify operation on channel 238C3 at Wolfforth, TX.

Exhibit 3

Construction has ben delayed due to circumstances beyond the control of the Applicant. The Applicant is awaiting Commission action which will permit it to move to a new community of license. On April 3, 1995, the Applicant filed a Petition for Rule Making to Amend the FM Table of Allotments, Littlefield, Wolfforth and Tahoka Texas and Request for Expedited Consideration with the Commission. The Applicant sought to amend the table of FM allotments so as to delete channel 238C3 at Littlefield, TX and to add channel 238C3 at Wolfforth, TX and to modify its unbuilt construction permit to specify operation on channel 238C3 at Wolfforth, TX. The applicant sought expedited consideration, noting that its construction permit would expire November 19, 1995.

On June 19, 1995, the Commission released its Notice of Proposed Rule Making seeking comments on the above referenced petition (copy is attached hereto as Exhibit A). The Applicant filed comments during the comment period which closed August 10, 1995 (reply comments August 25, 1995). The Applicant restated its intention to apply for channel 238C3 at Wolfforth, TX and that it would build the station promptly if allotted. As of the date hereof, the Commission has not acted on this Petition.

Because it is impossible for the Applicant to commence construction until after the grant requested in its Petition, the Applicant hereby requests an extension of time until June 30, 1996 to complete construction.

Federal Communications Commission

DA 95-1271

EXHIBIT A

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-83

In the Matter of

Amendment of Section 73.202(b), RM-8634
Table of Allotments,
FM Broadcast Stations.
(Littlefield, Wolfforth and
Tahoka, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 8, 1995;

Released: June 19, 1995

Comment Date: August 10, 1995

Reply Comment Date: August 25, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by 21st Century Radio Ventures, Inc. ("petitioner"), permittee of Station KAIQ(FM), Channel 238C3, Littlefield, Texas, requesting the reallocation of Channel 238C3 from Littlefield to Wolfforth, Texas, and the modification of its construction permit to specify Wolfforth as its community of license. Petitioner also requests the deletion of vacant Channel 237A at Tahoka, Texas, in the alternative, the substitution of Channel 278A for Channel 237A at Tahoka.¹ Petitioner states it will apply for Channel 238C3 at Wolfforth, if allotted.²

2. Petitioner seeks modification of Station KAIQ(FM)'s construction permit pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. Petitioner states that adoption of its proposal will result in a preferential arrangement of allotments by bring-

ing a first local aural transmission service to Wolfforth, while Littlefield will retain service from Station KZZN(AM). Petitioner notes that Wolfforth is an incorporated community with a population of 1,941 persons. Petitioner adds that Wolfforth is governed independently (Mayor and five council members) and hold elections for its own officials. Moreover, Wolfforth operates its own fire department and collects certain separate "ad valorem" property taxes. Petitioner states the reallocation will result in a dramatic increase in service to populated areas, with service increasing from 35,241 to 252,733 persons.³

3. We believe the proposal warrants consideration because the proposed reallocation of Channel 238C3 from Littlefield to Wolfforth, Texas, could provide the community with its first local aural transmission service. Further, the reallocation of Channel 238C3 to Wolfforth will not deprive Littlefield of its sole local aural transmission service or result in the reallocation of a channel from a rural community to one within an urbanized area. Channel 238C3 can be reallocated from Littlefield to Wolfforth, Texas, in compliance with the minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) south to accommodate petitioner's desired transmitter site.⁴ As requested, we also propose to modify petitioner's construction permit for Station KAIQ(FM) to specify Wolfforth as the station's community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept expressions of interest in the use of Channel 238C3 at Wolfforth or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. We shall also solicit comments on whether we should delete vacant and unapplied for Channel 237A at Tahoka, Texas. In accordance with Commission policy, if no party expresses an interest in use of Channel 237A at Tahoka, during the comment period in this proceeding, we shall delete the channel for lack of interest. However, if interest is expressed to retain Channel 237A and petitioner's proposal is adopted, we propose to substitute Channel 278A for Channel 237A at Tahoka. Channel 278A can be allotted to Tahoka in compliance with the minimum distance separation requirements with a site restriction of 5.6 kilometers (3.5 miles) northeast to accommodate petitioner's reallocation proposal.⁵

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

¹ Petitioner also suggests the allotment of Channel 240C3 at Littlefield, Texas, as a replacement for Channel 238C3. However, petitioner has not expressed an interest in applying for Channel 240C3 at Littlefield, therefore, we will not propose the allotment of the channel to the community.

² Although petitioner's request indicates that the original copy of its proposal was signed, petitioner failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and certifications. See also Amend-

ment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, n.42 (1990). Petitioner is requested to rectify this omission in its comments.

³ Petitioner states there will be a theoretical loss in service to 17,638 persons and denotes the loss is theoretical since Station KAIQ(FM) is unbuilt and has never been on the air. In addition, it advises that Station KAIQ(FM) was obtained on a first-come first-serve basis and as a result is not subject to any comparative hearing process restriction to change its community of license, citing, Memorandum and Opinion and Order, 5 FCC Rcd at 7097.

⁴ The coordinates for Channel 238C3 at Wolfforth are North Latitude 33-25-48 and West Longitude 102-03-35.

⁵ The coordinates for Channel 278A at Tahoka are North Latitude 33-11-34 and West Longitude 101-44-44.

DA 95-1271

Federal Communications Commission

City	Present	Channel No.	Proposed
	Option I		
Littlefield, Texas	238C3		-
Wolfforth, Texas	-	238C3	
Tahoka, Texas	237A		-
	Option II		
Littlefield, Texas	238C3		-
Wolfforth, Texas	-	238C3	
Tahoka, Texas	237A		278A

ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before August 10, 1995, and reply comments on or before August 25, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James L. Primm
21st Century Radio Ventures, Inc.
713 Broadway
Santa Monica, California 90401
(Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(e)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on

Federal Communications Commission

DA 95-1271

behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

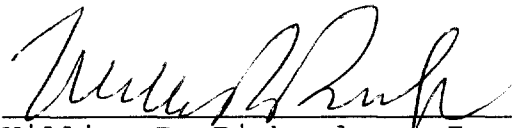
CERTIFICATE OF SERVICE

I, William R. Richardson, Jr., hereby certify that on this 8th day of November, 1995, I caused to be delivered by first class mail, postage prepaid, copies of the foregoing Supplement to Reply Comments of Lee W. Shubert, Trustee, to the following, at the addresses listed below:

James L. Primm (also sent to 530 Wilshire Boulevard
21st Century Radio Ventures, Inc. address)
713 Broadway
Santa Monica, CA 90401

*John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 8322
Washington, D.C. 20554

*Pam Blumenthal
Allocations Branch
Federal Communications Commission
2025 M Street, NW
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Washington, D.C. 20554



William R. Richardson, Jr.

* By Hand.